never became a binding obligation. There was no agreement to form a corporation, take stock therein, and pay therefor a certain sum. Under the facts in the case, if the subscription paper was capable of enforcement at all, it could be enforced only by one of the signers against another and not by the plaintiff corporation. But even if the subscription were otherwise enforcible the dissenting subscribers were released by the material and fundamental change made in the business from "dealing in" to "manufacturing" automobiles. A condition precedent to the original subscription was violated. *Marysville Electric Light and Power Co.* v. *Johnson,* 109 Cal. 192, 41 Pac. Rep. 1016. Again, the plaintiff, who seeks to enforce the contract of subscription is a different corporation, from that contemplated by the subscription, and hence cannot enforce the agreement. *Richmond Factory Ass'n* v. *Clark,* 61 Me. 351; *Knox* v. *Childersburg Land Co.,* 86 Ala. 180. See also CLARK AND MARSHALL, PRIVATE CORPORATIONS, §§ 439d, 481, 482, 483 and cases cited.

EQUITY—SPECIFIC PERFORMANCE—CONTRACT TO MAKE WILL.—Suit for specific performance of an alleged parol agreement by defendant's intestate to leave all his property to complainant. The proof showed that complainant, a young physician, at the instigation of deceased, an older physician of marked ability, entered into a partnership with him, cared for him in many ways and was often referred to by him as his "son" who "when I am gone gets all my estate"; but that complainant was benefited rather than injured by the partnership. *Held,* that complainant was not entitled to the relief sought. *Rosenwald* v. *Middlebrook* (1905), — Mo. —, 86 S. W. Rep. 200.

It seems to be generally accepted that a person may bind himself by a parol agreement to make a particular disposition of his property, both real and personal, by will though as regards realty the authorities are not harmonious. *Johnson* v. *Hubbell,* 10 N. J. Eq. 332, 66 Am. Dec. 773; *Lamb* v. *Hinman,* 46 Mich. 112, 8 N. W. Rep. 709. Such an agreement may be made in consideration of personal care and services such as are characteristic of the domestic relations. *Leonardson* v. *Hulin,* 64 Mich. 1, 31 N. W. Rep. 26; *Laird* v. *Vila,* — Minn. —, 100 N. W. Rep. 656; *Brown* v. *Sutton,* 129 U. S. 238. The remedy for a breach depends upon the nature of the services. If their value cannot be estimated specific performance will be decreed, otherwise an action must be brought for damages. In many instances the denial of specific performance would accomplish a fraud. *Winfield* v. *Bowen,* 65 N. J. Eq. 636, 56 Atl. Rep. 728; cf. *Grant* v. *Bradstreet,* 87 Me. 583, 33 Atl. Rep. 165, and equity will follow property fraudulently conveyed to a third party. *McCullom* v. *Mackrell,* 13 S. D. 262, 83 N. W. Rep. 255; cf. *Leonardson* v. *Hulin,* supra. Specific performance will not, however, be decreed unless the complainant shows by clear and convincing evidence, a complete contract properly executed on his own part. *Spencer* v. *Spencer,* 26 R. I. 237, 58 Atl. Rep. 766; *Stellmacher* v. *Bruder,* 89 Minn. 507, 95 N. W. Rep. 324; *Richardson* v. *Orth,* 40 Ore. 252, 66 Pac. Rep. 925; *Rodman* v. *Rodman,* 112 Wis. 378, 88 N. W. Rep. 218; nor if it would work a hardship, as in case of a promise to give all one's property at death, made before marriage and there is a surviving wife without knowledge of such promise. *Owens* v.

McNally, 113 Cal. 444, 45 Pac. Rep. 710, 33 L. R. A. 369; see also *Mahaney* v. *Carr,* 175 N. Y. 454, 67 N. E. Rep. 903. In the principal case the complainant failed in his proof. The decision is undoubtedly correct both in principle and on authority. *Clawson* v. *Brewer,* — N. J. Eq. —, 58 Atl. Rep. 598; *Seitman* v. *Seitman,* 204 Ill. 504, 68 N. E. Rep. 461; *Briles* v. *Goodrich,* 116 Iowa 517, 90 N. W. Rep. 354.

EVIDENCE—PHYSICIANS OF CONFLICTING SCHOOLS—COMPETENCY AS WITNESSES.—Plaintiff was afflicted with a slight stiffness in her right hip, for treatment of which she resorted to the defendant who held himself out as a practicing osteopathic physician and surgeon, and as competent, qualified and able to treat and reduce fractured dislocated bones, nerves, and muscles and to treat all such dislocations successfully and to reduce them osteopathically. The treatment resulted unfavorably to the plaintiff, and in this action for damages resulting from the alleged malpractice, she sought to introduce in evidence the testimony of certain allopathic physicians to contradict the correctness of defendant's diagnosis of the disease and the propriety of his subsequent treatment thereof. The defendant objected to the introduction of this testimony "because it was not shown that they had any knowledge or information as to the method prescribed, taught, or practiced by osteopaths for the treatment of hip joint disease, and because the question as to whether the treatment administered by the defendant was correct or incorrect must be determined by the rules and methods of osteopaths, and not by the methods or mode of treatment taught and practiced by allopathic physicians." Demurrer was interposed and overruled, but the court later (concededly for this reason) sustained a demurrer to the evidence. *Held,* error. *Grainger* v. *Still* (1905), — Mo. —, 85 S. W. Rep. 1114.

The decision of the principal case is in accord with the well settled rule that in an action for malpractice a physician and surgeon is entitled to have his treatment of his patient tested by the rules and principles of the school of medicine to which he belongs, and not by those of some other school. WHARTON & STILLE'S MEDICAL JURISPRUDENCE (5th ed.), Vol. 3, § 475; *Patten* v. *Wiggin,* 51 Me. 594; *Martin* v. *Courtney,* 75 Minn. 255; *Nelson* v. *Harrington,* 72 Wis. 591. In the *Harrington Case* the court held that a school of medicine to be entitled to recognition under this rule must have rules and principles of practice for the guidance of all its members, as respects principles, diagnosis, and remedies, which each member is supposed to observe in any given case. A class of practitioners who have no fixed principles or formulated rules for the treatment of diseases must be held to the duty of treating patients with the ordinary skill and knowledge of physicians in good standing. The principal case is one of first impression in Missouri and because of this fact the court has industriously and intelligently reviewed all the authorities to be cited upon the question. The case is also interesting as indicating the status of osteopathic physicians under local statutes.

EVIDENCE—RADIOGRAPH—X-RAY.—Defendant was prosecuted for assault with intent to murder. The evidence showed that the defendant was on lower ground than the person assaulted and it became material to show the course of the bullet. Over objection of defendant an X-ray photograph